ORIGINAL

FILED
2007 OCT 18 PM 3:39
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ______ DEPUTY

Darrell Palmer [SBN125147]
Law Offices of Darrell Palmer
603 N. Hwy 101, Suite A
Solana Beach, CA 92075
(858) 792-5600 telephone
(858) 792-5655 facsimile

Attorneys for Defendants
Ritalben, Inc, and Gaetano Cicciotti

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

DAVID SINGLETARY, Plaintiff, vs. RITALBEN, INC., a California Corporation, DBA CICCIOTTIS TRATTORIA ITALIANA and SEAFOOD; GAETANO CICCIOTTI, And DOES 1 through 100, inclusive Defendant	Case No.: '07 CV 2022 JM WMc (SDSC Case #: 37-2007-55367-CU-CR-NC) NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §1331(b) [FEDERAL QUESTION]

JURISDICTION of this Court is invoked on the basis of Federal Question pursuant to 28 U.S.C. §1331(b).

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS HEREIN:

PLEASE TAKE NOTICE that Defendants Ritalben, Inc, a California Corporation, DBA Cicciottis Trattoria Italiana and Seafood; Gaetano Cicciotti (hereinafter "Defendants"), hereby remove to this Court, the action described below:

1. Defendants invoke the jurisdiction of this Court based upon the provisions of 28 U.S.C. 1331, 28 U.S.C. 1441, and 28 U.S.C. 1446, on the grounds Plaintiff's Complaint in this action presents a federal question over which the District Courts have original jurisdiction, namely violation of the American with Disabilities Act, as established at page 2, paragraph 6, and page 3, paragraph 9, of Plaintiff's Complaint, attached hereto as Exhibit "A."

2. On August 16, 2007, the within action was commenced in the Superior Court of the State of California in and for the County of San Diego, entitled David Singletary v. Ritalben,

Inc, a California Corporation, DBA Cicciottis Trattoria Italiana and Seafood; Gaetano Cicciotti and Does 1 through 100, inclusive as Case No.: 37-2007-55367-CU-CR-NC.

3. The Complaint in this matter was served on September 18, 2007. A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit "A."

4. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1331, and is one which may be removed to this Court by the Defendant pursuant to the provisions of 28 U.S.C. §1441(b), in that it is a civil action over which the District Courts have original jurisdiction pursuant to 28 U.S.C. §1331.

5. Accordingly, the United States District Court for the Central District of California has jurisdiction, and this action is properly removed pursuant to 28 U.S.C. §1441, et. seq.

Dated: October 18, 2007

LAW OFFICES OF DARRELL PALMER
Darrell Palmer,
Attorneys for Defendants

Re: Singletary v. Ritalben, Inc., et. al.
Case No.:

DECLARATION OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, MICHELLE MELTON, declare as follows:

I am employed with the Law Offices of Darrell Palmer whose address is 603 N Hwy 101, Ste A, Solana Beach, CA 92075. I am readily familiar with the business practices of this office for collection and processing of correspondence for mailing with the United States Postal Service; I am over the age of eighteen (18) and I am not a party to this action.

On October 18, 2007, I caused to be served the following:

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §1331(b)

on the interested parties:

M. Eric Parkan, Esq.
Center for Disability Access, LLP
100 E. San Marcos Blvd., Suite 400
San Marcos, CA 92069-2988

__ by placing a copy in a separate envelope addressed to each addressee as indicated below and personally delivering it to the above named persons.

____ by sending a copy via overnight mail. Airbill No. __________.

__X__ by placing a copy in a separate envelope, with postage fully prepaid, for each address named on the attached service list for collection and mailing on the above indicated day following the ordinary business practices of our offices

_____ by sending a copy via facsimile transmission to the facsimile number(s) indicated below. The facsimile machine I used complied with California Rules of Court, Rule 2003, and no error was reported by machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Solana Beach, California.

Michelle M. Melton

EXHIBIT A

CENTER FOR DISABILITY ACCESS, LLP
M. ERIC PARKAN, ESQ., SBN 35687
MARK D. POTTER, ESQ., SBN 166317
RUSSELL C. HANDY, ESQ., SBN 195058
CHRISTIANA POYNTER, ESQ., SBN 234409
100 East San Marcos Blvd., Suite 400
San Marcos, CA 92069-2988
(760) 480-4162
Fax (760) 480-4170

Attorney for Plaintiff, DAVID SINGLETARY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DAVID SINGLETARY, Plaintiff, V RITALBEN, INC., A California Corporation, DOING BUSINESS AS CICCIOTTIS TRATTORIA ITALIANA AND SEAFOOD; GAETAN CICCIOTTI, and DOES 1 through 100, inclusive, Defendants.	Case No.: 37-2007-00055367-CU-CR-NC **COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATIONS OF:** AMERICAN'S WITH DISABILITIES ACT; UNRUH CIVIL RIGHTS ACT; CALIFORNIA DISABLED PERSONS ACT; NEGLIGENCE **DEMAND FOR JURY**

Plaintiff DAVID SINGLETARY complains of Defendants RITALBEN, INC., A California Corporation, DOING BUSINESS AS CICCIOTTIS TRATTORIA ITALIANA AND SEAFOOD; GAETAN CICCIOTTI, and DOES 1 through 100, inclusive, (hereinafter referred to as "Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic, who cannot walk, and uses a wheelchair for mobility.

2. Defendants are or were at the time of the incident the owners and operators and/or lessors and lessees of the Restaurant located at 1933 San Elijo Avenue, Cardiff By The Sea, California.

3. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including DOES 1 through 100, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and DOES 1 through 100, inclusive, are ascertained

FACTUAL ALLEGATIONS:

4. The Restaurant is a facility open to the public, a place of public accommodation, and a business establishment.

5. The Plaintiff went to the Restaurant on October 26, 2006, to eat.

6. During Plaintiff's visit, he encountered various violations of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations, including, but not limited to, there was a lack of van accessible disabled parking, there was a lack of properly configured accessible disabled parking, and there was a lack of an accessible bathroom, due to inaccessible door hardware and excessive door pressures, and inaccessible features.

7. Naturally, Plaintiff SINGLETARY was frustrated, angry and/or vexed as a result of encountering these conditions, these violations of his civil rights, and the lack of safe, convenient and accessible facilities. Although these injuries are modest in scope and did not result in any loss of wages or economic damage or medical care or attention, the continued violation of the plaintiff's civil rights by these defendants and the highly unpleasant emotional distress caused by such unlawful treatment is attributable to the actions or inactions of the defendants and plaintiff seeks redress from these defendants for such injury.

8. Plaintiff would like to return and patronize the Defendants' Restaurant but

because of plaintiff's knowledge of the existence of the inaccessible conditions and policies, the plaintiff is unable to use the Restaurant on a "full and equal" basis until the Restaurant is brought into compliance with the provisions of the Americans with Disabilities Act Accessibility Guidelines and state accessibility law as pled herein. Plaintiff has been and currently is being deterred from returning and patronizing the Defendants' Restaurant.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and Against All Defendants (42 U.S.C. section 12101, et seq.)

9. The defendants are persons who either own, operate, lease or lease to a place of public accommodation. As such, the Defendants are required to (1) ensure that all construction, alteration, or modification is barrier free and complies with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations (aka "California Building Code"); and/or (2) remove all existing barriers where such removal is "readily achievable." The Defendants have failed to meet these obligations. The existence of readily achievably removed barriers and barriers in violation of the ADAAG and/or California Building Code, including, but not limited to, there was a lack of van accessible disabled parking, there was a lack of properly configured accessible disabled parking, and there was a lack of an accessible bathroom, due to inaccessible door hardware and excessive door pressures, and inaccessible features, is unlawful and has resulted in the defendants' failure to provide full and equal accommodations, advantages, facilities, privileges and/or services to the plaintiff.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 51-53)

10. The defendants are persons who either own, operate, lease or lease to a place of public accommodation or business establishment. As such, the Defendants are required to (1) ensure that all construction, alteration, or modification is barrier free and complies with the Americans with Disabilities Act Accessibility Guidelines

("ADAAG") and Title 24 of the California Code of Regulations (aka "California Building Code"); and (2) remove all existing barriers where such removal is "readily achievable." The Defendants have failed to meet these obligations. The Defendants intended the physical and architectural condition of their property. The existence of readily achievably removed barriers and barriers in violation of the ADAAG and/or California Building Code, including, but not limited to, there was a lack of van accessible disabled parking, there was a lack of properly configured accessible disabled parking, and there was a lack of an accessible bathroom, due to inaccessible door hardware and excessive door pressures, and inaccessible features, is unlawful and has resulted in the defendants' failure to provide full and equal accommodations, advantages, facilities, privileges and/or services to the plaintiff.

11. The acts alleged above, which form the basis of the plaintiff's discrimination claim, are intentional acts.

III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA DISABLED PERSONS ACT (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 54-54.8)

12. The defendants are persons who either own, operate, lease or lease to a place of public accommodation or a facility open to the public. As such, the Defendants are required to (1) ensure that all construction, alteration, or modification is barrier free and complies with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of Regulations (aka "California Building Code"); and (2) remove all existing barriers where such removal is "readily achievable." The Defendants have failed to meet these obligations. The existence of readily achievably removed barriers and barriers in violation of the ADAAG and/or California Building Code, including, but not limited to, there was a lack of van accessible disabled parking, there was a lack of properly configured accessible disabled parking, and there was a lack of an accessible bathroom, due to inaccessible door hardware and excessive door pressures, and inaccessible features, is unlawful and has resulted in the defendants' failure to provide full and equal accommodations, advantages, facilities, privileges and/or services to the plaintiff.

IV. FOURTH CAUSE OF ACTION: NEGLIGENCE (On behalf of Plaintiff and Against All Defendants)

13. The defendants had a general duty and a duty arising under the Americans with Disabilities Act and the Unruh Civil Rights Act and California Disabled Persons Act to provide safe, convenient, and accessible facilities to the plaintiff in the running of their Restaurant. Their breach of this duty, as alleged in the preceding paragraphs, has caused injury and damage as alleged above.

PRAYER:

Wherefore, Plaintiff prays that this court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. **Note**: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under that section.

2. Damages under the Unruh Civil Rights Act and/or the California Disabled Persons Act. **Note:** A defendant cannot be held liable for damages under both the Unruh Civil Rights Act and the California Disabled Persons Act and the plaintiff will make an election at trial depending upon the evidence amassed.

3. Reasonable attorneys' fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ. Proc. § 1021.5.

Dated: July 23, 2007

CENTER FOR DISABILITY ACCESS, LLP

By: ______________________

MARK D. POTTER
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: July 23, 2007

CENTER FOR DISABILITY ACCESS, LLP

By:________________________
MARK D. POTTER
Attorneys for Plaintiff

ORIGINAL

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

FILED

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
DAVID SINGLETARY

DEFENDANTS
RITALBEN, INC., ET. AL.

2007 OCT 18 PM 3:38

CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. BY DEPUTY

BY FAX

(c) Attorney's (Firm Name, Address, and Telephone Number)
M. Eric Parkan, Esq. [SBN 35687]
100 E. San Marcos Blvd., Suite 400, San Marcos, CA 92069-2988

Attorneys (If Known)
'07 CV 2022 JM WMC
Darrell Palmer [SBN125147]
603 N. Hwy 101, Suite A, Solana Beach, CA 92075

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☒ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
42 U.S.C. 12101 et. seq.

Brief description of cause:
Alleged ADA violations

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE
10/18/2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 143675 AMOUNT $350 APPLYING IFP KD 10/18/07 JUDGE ______ MAG. JUDGE ______

Re: Singletary v. Ritalben, Inc., et. al.
Case No.:

DECLARATION OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, MICHELLE MELTON, declare as follows:

I am employed with the Law Offices of Darrell Palmer whose address is 603 N Hwy 101, Ste A, Solana Beach, CA 92075. I am readily familiar with the business practices of this office for collection and processing of correspondence for mailing with the United States Postal Service; I am over the age of eighteen (18) and I am not a party to this action.

On October 18, 2007, I caused to be served the following:

CIVIL COVER SHEET

on the interested parties:

M. Eric Parkan, Esq.
Center for Disability Access, LLP
100 E. San Marcos Blvd., Suite 400
San Marcos, CA 92069-2988

___ by placing a copy in a separate envelope addressed to each addressee as indicated below and personally delivering it to the above named persons.

_____ by sending a copy via overnight mail. Airbill No. ___________.

_X_ by placing a copy in a separate envelope, with postage fully prepaid, for each address named on the attached service list for collection and mailing on the above indicated day following the ordinary business practices of our offices

_____ by sending a copy via facsimile transmission to the facsimile number(s) indicated below. The facsimile machine I used complied with California Rules of Court, Rule 2003, and no error was reported by machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Solana Beach, California.

Michelle M. Melton

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 143679 - KD
*** * C O P Y * ***
October 18, 2007
15:42:15

Civ Fil Non-Pris
USAO #.: 07CV2022
Judge..: JEFFREY T MILLER
Amount.: $350.00 CK
Check#.: BC D3112131

Total-> $350.00

FROM: CIVIL FILING
SINGLETARY V. RITALBEN, INC, E